

conviction of a protestor that burned his draft card on the ground that the Government had a substantial interest in protecting a document necessary for the efficient functioning of the selective service system. Why is our interest in protecting currency or Government documents any stronger than protecting our greatest national symbol?

Opponents of the flag amendment also maintain that it trivializes the Bill of Rights by carving out an exception to the first amendment. This argument is based on the classic libertarian belief that truth can only emerge from complete freedom of expression and that the Government cannot be trusted to distinguish between acceptable and unacceptable forms of action or speech.

This first amendment absolutism, however, is contrary to our constitutional tradition. The list of types of speech that may be regulated or banned by the Government according to our Supreme Court precedents is lengthy: libel, obscenity, fighting words, child pornography, deceptive advertising, inciteful speech, speech that breaches personal privacy, speech that undermines national security, nude dancing, speech by public employees, infringements of copyright, and speech on public property, to name a few.

And consider how narrow the flag amendment's restriction of speech really is and how little it limits our ability to protest against the Government. Even if the amendment is enacted one could still write or say anything about the Government; one could still burn a copy of the Constitution or effigies of political leaders; indeed, one could put a picture of a flag being burned on the Internet and circulate it to millions of people across the world with the push of a button.

Recall the words the protestors chanted while Gregory Lee Johnson set a flag on fire and gave rise to this entire controversy:

Reagan and Mondale, which will it be? Either one means World War III. Ronald Reagan, killer of the hour, perfect example of U.S. power. America, the red, white, and blue, we spit on you, you stand for plunder, you will go under.

So regardless of whether we have a flag amendment, there are a multitude of ways to heap contempt on the Government, should one choose to do so. The effect of the amendment on free expression would be negligible.

But if the impact of the restriction is so minimal, why do we need to raise this issue to such a level of importance? The answer is because the flag remains the most powerful symbol capable of unifying a diverse, disparate nation. It is a centrifugal, galvanizing force in our lives—and it will remain so only as long as it is not trashed, despoiled, or debauched by those who insist that one is free to indulge in any act to give expression to his or her thoughts.

I also want to take issue with the contention that our liberal tradition

prohibits us from ever making substantive value judgments about what is good speech and what is not or that we must always remain indifferent or neutral with respect to the ideas and images that bombard us over the airwaves or through the media. For when freedom is defined by the absence of all restraint, then liberty descends to license and license yields to disorder and dysfunction. As someone once observed, a river without its banks is not a river, but a flood.

Senator DOLE touched on this theme in a speech he gave earlier this year criticizing the violent movies being produced in Hollywood these days. It isn't inconsistent with the first amendment to speak out against movies that contain dozens of shootings, or gruesome acts of violence that are then copied in real life only days after the initial screening. It isn't an act of Government censorship for politicians to criticize music containing lyrics that denigrate women, glorify cop-killers as role models, and promote racial divisiveness.

Likewise, it is not Government censorship when the people amend the Constitution to prohibit one narrow, repulsive form of expression. The process of amending the Constitution does not consist of a dictatorial tyrant or imperial monarch exercising its power over enslaved subjects; rather it is the act of free people exercising their sovereign power to impose rules upon themselves. By enacting this amendment through the process set forth in article V of the Constitution, "We the people" will be determining that the message being expressed by those who burn the flag is not worthy of legal protection. The amendment represents a subjective, value-laden judgment by "the people" that our interest in preventing the damage that flag desecration inflicts upon our national character outweighs the meager contribution that flag burning makes to the advancement of knowledge and understanding of ideas. The Supreme Court balances interests in this manner in almost every constitutional case it decides. Why is it that we have no qualms about deferring to the value-judgments made by unelected jurists but we become squeamish when making such judgments through our most solemn act of self-government—amending the Constitution?

I do not believe this flag amendment sets a bad precedent by carving out an exception to the first amendment or that "the people" will act irresponsibly by amending the Constitution in a frequent or cavalier fashion. For one thing, the Constitution, in its wisdom, makes that too difficult to do. Also, I trust the people. They understand the value of liberty. I am confident that it will be the rare occasion that the people make an exception to our general tolerance for free expression by targeting a form of expressive activity for special treatment. And I am confident that our national character will be im-

proved, not weakened, by the protection of our unique symbol of nationhood.

I agree with Justice Stevens' opinion in *Texas versus Johnson*. He said:

The value of the flag as a symbol cannot be measured. Even so, I have no doubt that the interest in preserving that value for the future is both significant and legitimate.

Similarly, in my considered judgment, sanctioning the public desecration of the flag will tarnish its value, both those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it. That tarnish is not justified by the trivial burden on free expression occasioned by requiring an available, alternative mode of expression, including words critical of the flag, be employed.

So I support this resolution to send the flag protection amendment to the States for ratification. And I urge my colleagues to support it as well.

## MESSAGES FROM THE HOUSE

### ENROLLED BILLS SIGNED

At 4:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 325. An act to amend the Clean Air Act to provide for an optional provision for the reduction of work-related vehicle trips and miles traveled in ozone nonattainment areas designated as severe, and for other purposes.

H.R. 1240. An act to combat crime by enhancing the penalties for certain sexual crimes against children.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

## MEASURE PLACED ON THE CALENDAR

The following measure was read a second time and placed on the calendar:

S. 1472. A bill to provide for one additional Federal judge for the middle district of Louisiana and one less Federal judge for the eastern district of Louisiana.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1698. A communication from the Director of Selective Service, transmitting, pursuant to law, a report relative to the Inspector General Act; to the Committee on Governmental Affairs.

EC-1699. A communication from the Administrator of the U.S. Agency for International Development, transmitting, pursuant to law, the report under the Inspector General Act for the April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1700. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30,

1995; to the Committee on Governmental Affairs.

EC-1701. A communication from the Chairman of the Board of Directors of the Panama Canal Commission, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1702. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the Inspector General's report for the six-month period ending September 30, 1995; to the Committee on Governmental Affairs.

EC-1703. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1704. A communication from the Administrator of the General Services Administration, transmitting, a draft of proposed legislation to amend the Federal Property and Administrative Act of 1949, as amended, (40 U.S.C. 484(j)) to authorize the Administrator of General Services to transfer title surplus personal property the State agencies for surplus property for donation to eligible donees without Federal restrictions; to the on Governmental Affairs.

EC-1705. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the semi-annual report of the Inspector General and the Management Response for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1706. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1707. A communication from the Director of the Peace Corps, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1708. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1709. A communication from the Chairman and General Counsel of the National Labor Relations Board, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1710. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

EC-1711. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report under the Inspector General Act for the period April 1 through September 30, 1995; to the Committee on Governmental Affairs.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 650. A bill to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, and for other purposes (Rept. No. 104-185).

By Mr. WARNER, from the Committee on Rules and Administration, without amendment:

H.R. 2527. A bill to amend the Federal Election Campaign Act of 1971 to improve the electoral process by permitting electronic filing and preservation of Federal Election Commission reports, and for other purposes.

H.J. Res. 69. A joint resolution providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 110. A joint resolution providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 111. A joint resolution providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 112. A joint resolution providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution.

By Mr. WARNER, from the Committee on Rules and Administration, with an amendment and with a preamble:

S. Con. Res. 34. A concurrent resolution to authorize the printing of "Vice Presidents of the United States, 1789-1993".

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance:

Joshua Gotbaum, of New York, to be an Assistant Secretary of the Treasury.

Jeffrey R. Shafer, of New Jersey, to be an Under Secretary of the Treasury.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HATCH, from the Committee on the Judiciary:

Merrick B. Garland, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

(The above nomination was reported with the recommendation that he be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAMS:

S. 1478. A bill to facilitate the ability of a private consortium to site, design, license, construct, operate, and decommission a private facility for the interim storage of commercial spent nuclear fuel, subject to licensing by the Nuclear Regulatory Commission, to authorize the Secretary of Energy to contract with the consortium for storage services, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 1479. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to improve control of acid mine drainage, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. BOXER (for herself and Mr. HARKIN):

S. 1480. A bill to provide for the comparable treatment of Federal employees and Members of Congress and the President during a period in which there is a Federal Government shutdown; to the Committee on Governmental Affairs.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAMS:

S. 1478. A bill to facilitate the ability of a private consortium to site, design, license, construct, operate, and decommission a private facility for the interim storage of commercial spent nuclear fuel, subject to licensing by the Nuclear Regulatory Commission, to authorize the Secretary of Energy to contract with the consortium for storage services, and for other purposes; to the Committee on Energy and Natural Resources.

##### THE PRIVATE INTERIM STORAGE FACILITY AUTHORIZING ACT OF 1995

• Mr. GRAMS. Mr. President, on the heels of today's Senate Energy and Natural Resources Committee hearing on legislation to amend the Nuclear Waste Policy Act, I am introducing legislation to privatize the Federal spent fuel interim storage program. It is my understanding that the House plans to act on similar legislation before the Christmas recess. Today's hearing, coupled with the introduction of my bill should provide the impetus for timely action in the full Senate.

When the Energy Committee held a hearing on various nuclear waste policy proposals earlier this year, all of our witnesses agreed that the "1998" date is critical in this debate. With 1996 only a few weeks away, the deadline is rapidly approaching and we are no closer to resolving this issue than the last time Congress enacted nuclear waste legislation [1987].

But it is not like we haven't seen this deadline coming. For 16 years, the Department of Energy has been charged with the responsibility of our civilian spent fuel. In that time, DOE has spent nearly \$5 billion of ratepayers' money—including over \$250 million from Minnesota's electric customers. And yet here we sit, debating the issue of exactly what to do with America's civilian nuclear waste.

But the Department of Energy just continues to go round in circles. First, they said we can store waste at Yucca Mountain; then they tell us we can't force it on Nevada. Then DOE says they can't meet the 1998 deadline—and even claim they aren't legally bound to do so; then they tell us they can, if only Congress would "untie" their hands. The latest was that an interim facility couldn't be complete for 7 years at a cost of nearly \$400 million; then their testimony says it could be